

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES INVESTOR PROTECTION
CORPORATION,**

Plaintiff-Applicant,

V.

**BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,**

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

**IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff Investment
Securities LLC,**

Plaintiff,

V.

HSBC BANK PLC, *et al.*,

Defendants.

Adv. Pro. No. 08-01789 (CGM)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 09-01364 (CGM)

**AMENDED ANSWER AND AFFIRMATIVE DEFENSES
OF ALPHA PRIME FUND LIMITED**

Defendant Alpha Prime Fund Limited (“Alpha Prime” or “Alpha Prime Fund”), by and through its undersigned counsel, answer the Second Amended Complaint filed by Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC (the “Trustee”) upon knowledge as to its own acts and upon information and belief as to all other matters as follows:

NATURE OF THE ACTION

1. Denies the allegations in paragraph 1.
2. Admits that many of the Alpha Prime directors worked in the securities industry and denies all other allegations in paragraph 2.
3. Admits that Alpha Prime was formed in 2003 and denies all other allegations in paragraph 3.
4. Denies the allegations in paragraph 4.
5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5.
6. Alpha Prime admits that it filed a customer claim in the amount of \$250,671,000 and denies the remaining allegations against it in paragraph 6.
7. Admits the allegations in paragraph 7.

II. JURISDICTION AND VENUE

8. Declines to respond to the allegations in paragraph 8 on the ground that they constitute legal conclusions to which no response is required. To the extent the allegations in paragraph 8 constitute allegations of fact, Alpha Prime denies them.

9. Declines to respond to the allegations in paragraph 9 on the ground that they constitute legal conclusions to which no response is required. To the extent the allegations in paragraph 9 constitute allegations of fact, Alpha Prime denies them.

10. Declines to respond to the allegations in paragraph 10 on the ground that they constitute legal conclusions to which no response is required. To the extent the allegations in paragraph 10 constitute allegations of fact, Alpha Prime denies them.

11. Declines to respond to the allegations in paragraph 11 on the ground that they constitute legal conclusions to which no response is required. To the extent the allegations in paragraph 11 constitute allegations of fact, Alpha Prime denies them.

12. Declines to respond to the allegations in paragraph 12 on the ground that they constitute legal conclusions to which no response is required. Alpha Prime admits that on February 2, 2009, it filed a claim with the Trustee with respect to BLMIS account number 1FR097. To the extent the remaining allegations in paragraph 12 constitute allegations of fact, Alpha Prime denies them.

13. Declines to respond to the allegations in paragraph 13 on the ground that they constitute legal conclusions to which no response is required. To the extent the allegations in paragraph 13 constitute allegations of fact, Alpha Prime denies them.

III. BACKGROUND, THE TRUSTEE AND STANDING

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14.

15. Admits the allegations of paragraph 15.

16. Admits the allegations of paragraph 16.

17. Admits the allegations of paragraph 17.

18. Admits the allegations of paragraph 18.

19. Admits that Madoff pleaded guilty to a criminal information and otherwise Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19.

20. Admits that Frank DiPascali pleaded guilty to participating in a Ponzi scheme and otherwise Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22.

23. Declines to respond to the allegations in paragraph 23 on the ground that they constitute legal conclusions to which no response is required. To the extent the allegations in paragraph 23 constitute allegations of fact, Alpha Prime denies them.

24. Declines to respond to the allegations in paragraph 24 on the ground that they constitute legal conclusions to which no response is required. To the extent the allegations in paragraph 24 constitute allegations of fact, Alpha Prime denies them.

25. Declines to respond to the allegations in paragraph 25 on the ground that they constitute legal conclusions to which no response is required. To the extent the allegations in paragraph 25 constitute allegations of fact, Alpha Prime denies them.

26. Declines to respond to the allegations in paragraph 26 on the ground that they constitute legal conclusions to which no response is required. To the extent the allegations in paragraph 26 constitute allegations of fact, Alpha Prime denies them.

IV. THE PONZI SCHEME

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28, except that Alpha Prime denies that Madoff told Alpha Prime that he would enter and exit the market between eight and twelve times a year.

29. Denies the allegations in paragraph 29.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30.

31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33.

34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34.

35. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35.

36. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36.

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37.

38. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38.

39. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39.

40. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40.

41. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41.

42. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42.

43. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43.

44. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44.

45. Denies the allegations in paragraph 45.

46. Denies the allegations in paragraph 46.

47. Denies the allegations in paragraph 47.

A. Sonja Kohn Worked with Zapotocky and Bank Austria to Create Primeo

48. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48.

49. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49.

50. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50.

51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51.

52. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52.

53. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53.

54. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54.

55. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 55.

56. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56.

57. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57.

58. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 58.

59. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59.

B. Alpha Prime is Managed and Services by Primeo's Directors and Agents

60. Denies the allegations in paragraph 60.

61. Admits the allegations in paragraph 61.

62. Admits the allegations in paragraph 62 except that Alpha Prime denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59 relating to Thema Fund Limited.

63. Admits that virtually all duties were delegated to BA Worldwide.

64. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 64.

65. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 65.

66. Denies the allegations in paragraph 66.

67. Denies the allegations in paragraph 67.

68. Denies the allegations in paragraph 68.

69. Denies the allegations in paragraph 69.

71. Admits that the following directors served as directors of Alpha Prime during the periods listed below: (i) Ursula Radel-Leszczyński: March 14, 2003-approximately June 13, 2007; (ii) Peter Fischer: November 17, 2006 – Present; (iii) Stefan Zapotocky: March 26, 2003 –December 31, 2016; (iv) Sonja Kohn: March 17, 2003 – November 17, 2006; (v) Adam Zielinski: May 2, 2007-March 2, 2009; (vi) Nigel Fielding: March 17, 2003 – December 29, 2006.

C. The Directors Continue to Find Paths to Madoff

72. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 71.

73. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 72.

74. Denies the allegations in paragraph 73.

75. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 74.

76. Denies the allegations in paragraph 75.

77. Denies the allegations in paragraph 76.

78. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 77.

79. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 78.

80. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 79.

81. Denies the allegations in paragraph 80.

82. Denies the allegations in paragraph 81.

83. Denies the allegations in paragraph 82.

84. Denies the allegations in paragraph 83.

85. Denies the allegations in paragraph 84.

86. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 85.

87. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 86.

88. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 87.

89. Denies the allegations in paragraph 88.

90. Denies the allegations in paragraph 89.

91. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 90.

92. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 91.

93. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 92.

94. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 93.

95. Denies the allegations in paragraph 94.

96. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 95.

97. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 96.

98. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 97.

99. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 98.

100. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 99.

101. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 100.

102. Denies allegations in paragraph 101.

102. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 102.

103. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 103.

104. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 104.

105. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 105.

106. Denies the allegations in paragraph 106.

107. Denies the allegations in paragraph 107.

108. Denies the allegations in paragraph 108.

109. Denies the allegations in paragraph 109.

110. Denies the allegations in paragraph 110.

111. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 111.

112. Denies the allegations in paragraph 112.

113. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 113.

114. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 114.

115. Denies the allegations in paragraph 115.

116. Admits the allegations in paragraph 116.

117. Denies the allegations in paragraph 117.

118. Denies the allegations in paragraph 118.

119. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 119.

120. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 120.

121. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 121.

122. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 122.

123. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 123.

124. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 124.

125. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 125.

126. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 126.

127. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 127.

128. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 128.

129. Denies the allegations in paragraph 129.

130. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 130.

131. Denies the allegations in paragraph 131.

132. Denies the allegations in paragraph 132.

133. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 133 except that Alpha Prime denies that Bank Medici received valuation reports for Alpha Prime.

134. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 134.

135. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 135.

136. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 136.

137. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 137.

138. Denies the allegations in paragraph 138.

139. Denies the allegations in paragraph 139.

140. Denies the allegations in paragraph 140.

141. Denies the allegations in paragraph 141.

142. Denies the allegations in paragraph 142.

143. Denies the allegations in paragraph 143.

144. Denies the allegations in paragraph 144.

145. Denies the allegations in paragraph 145.

146. Denies the allegations in paragraph 146.

147. Denies the allegations in paragraph 147.

148. Denies the allegations in paragraph 148.

149. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 149.

150. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 150.

151. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 151.

152. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 152.

145. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 153.

146. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 154.

147. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 155.

148. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 156.

149. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 157.

158. Denies the allegations in paragraph 158.

159. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 159.

160. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 160.

161. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 161.

162. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 162.

163. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 163.

164. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 164.

165. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 165.

166. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 166.

167. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 167.

168. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 168.

169. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 169.

170. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 170.

171. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 171.

172. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 172.

173. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 173.

174. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 174.

175. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 175.

176. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 176.

177. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 177.

178. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 178.

179. Denies the allegations in paragraph 179.

180. Denies the allegations in paragraph 180.

181. Denies the allegations in paragraph 181.

182. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 182.

183. Denies the allegations in paragraph 183.

184. Admits the allegations in paragraph 184.

185. Denies the allegations in paragraph 185.

186. Denies the allegations in paragraph 186.

187. Admits the allegations in paragraph 187 to the extent that they are consistent with the Partial Settlement Agreement.

188. Alpha Prime incorporates by reference its responses to paragraphs 1 through 187 as though fully set forth herein.

189. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 189.

190. Declines to respond to the allegations in paragraph 190 on the ground that they constitute legal conclusions to which no response is required. To the extent the allegations in paragraph 190 constitute allegations of fact, Alpha Prime denies them.

191. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 191.

192. Denies the allegations in paragraph 192.

193. Denies the allegations in paragraph 193.

194. Alpha Prime incorporates by reference its responses to paragraphs 1 through 193 as though fully set forth herein.

195. Denies the allegations in paragraph 195.

196. Declines to respond to the allegations in paragraph 196 on the ground that they constitute legal conclusions to which no response is required. To the extent the allegations in paragraph 196 constitute allegations of fact, Alpha Prime denies them.

197. Denies the allegations in paragraph 197.

198. Declines to respond to the allegations in paragraph 198 on the ground that they constitute legal conclusions to which no response is required. To the extent the allegations in paragraph 198 constitute allegations of fact, Alpha Prime denies them.

199. Denies the allegations in paragraph 199.

200. Alpha Prime incorporates by reference its responses to paragraphs 1 through as though fully set forth herein.

201. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 201.

202. Declines to respond to the allegations in paragraph 202 on the ground that they constitute legal conclusions to which no response is required. To the extent the allegations in paragraph 202 constitute allegations of fact, Alpha Prime denies them.

203. Denies the allegations in paragraph 203.

204. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 204.

205. Denies the allegations in paragraph 205.

206. Alpha Prime incorporates by reference its response to paragraphs 1 through 205 as though fully set forth herein.

207. Declines to respond to the allegations in paragraph 207 on the ground that they constitute legal conclusions to which no response is required. To the extent the allegations in paragraph 207 constitute allegations of fact, Alpha Prime denies them.

208. Declines to respond to the allegations in paragraph 208 on the ground that they constitute legal conclusions to which no response is required. To the extent the allegations in paragraph 208 constitute allegations of fact, Alpha Prime denies them.

209. Denies the allegations in paragraph 209.

210. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 210.

211. Denies the allegations in paragraph 211.

212. Alpha Prime incorporates by reference its responses to paragraphs 1 through 212 as though fully set forth herein.

213. Denies the allegations in paragraph 213.

214. Denies the allegations in paragraph 214.

215. Denies the allegations in paragraph 215.

216. Denies the allegations in paragraph 216.

217. Denies the allegations in paragraph 217.

218. Denies the allegations in paragraph 218.

AFFIRMATIVE DEFENSES

First Affirmative Defense

1. The Transfers are protected by the safe harbor provisions of 11 U.S.C. § 546(e)

Second Affirmative Defense

2. The Trustee has failed to satisfy the requirements of 11 U.S.C. § 544.

Third Affirmative Defense

3. Alpha Prime is entitled to a claim pursuant to 11 U.S.C. § 502(h).

Fourth Affirmative Defense

4. Because the Trustee has chosen his remedy, he cannot now subordinate Alpha Prime's section 502(h) claim related to the Partial Settlement Agreement.

Fifth Affirmative Defense

5. Under applicable Bermuda law, imputation of the knowledge of Nigel Fielding and Bank Medici is improper.

Sixth Affirmative Defense

6. The Debtor received fair consideration or reasonably equivalent value for the Transfers.

Seventh Affirmative Defense

7. Alpha Prime received the transfers in “good faith.”

Eighth Affirmative Defense

8. To the extent any service providers had any knowledge of the Ponzi scheme, which is denied, those service providers were acting outside the scope of their agency and imputation of their knowledge is improper.

Ninth Affirmative Defense

9. The Trustee’s claims are barred in whole or in part by the doctrines of waiver, estoppel, and laches.

Tenth Affirmative Defense

10. The Trustee’s claims are barred in whole or in part by the doctrine of unclean hands.

Eleventh Affirmative Defense

11. The Trustee’s claims are barred in whole or in part because Alpha Prime was a mere conduit.

12. Alpha Prime reserves the right to raise other affirmative defenses that may subsequently become or appear applicable to some or all of the Trustee’s claims.

CONCLUSION

WHEREFORE, Defendant Alpha Prime Fund Ltd requests judgment dismissing the Second Amended Complaint, awarding costs, disbursements and reasonable attorneys' fees and such other and further relief as the Court deems just and proper.

Dated: June _____, 2021
New York, New York

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